

PRENEED FUNERAL ARRANGEMENT ACT

58-58-1. Short title.

This chapter is known as the "Preneed Funeral Arrangement Act."

58-58-2. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

- (1) "Beneficiary" means the individual who is to receive the benefit of the personal property and services purchased under the preneed funeral arrangement contract at the time of his death.
- (2) "Board" means the Preneed Funeral Arrangement Licensing Board created in Section 58-58-3.
- (3) "Buyer" means any person who purchases a preneed funeral arrangement as defined in this chapter.
- (4) "Incidental to the time of purchase" means within 90 days following the date of purchase.
- (5) "Licensed provider" means a licensed funeral establishment that furnishes or will furnish the services or property purchased under a preneed funeral arrangement.
- (6)
 - (a) "Preneed funeral arrangement or contract" means any written or oral contract or agreement sold in advance of the death of the beneficiary under which a person agrees with a buyer to provide at the death of the beneficiary any merchandise, goods, services, real property, or personal property, including caskets, other primary containers, cremation or transportation containers, outer burial containers, vaults, grave liners, funeral clothing and accessories, monuments, grave markers, cremation urns, embalming services, and funeral directing services as are typically provided in connection with the final disposition of a dead human body.
 - (b) "Preneed funeral arrangement or contract" does not include a policy or product of life insurance providing a death benefit cash payment upon the death of the beneficiary which is not limited to providing the products or services described in Subsection (a).
- (7) "Sales agent" means an individual licensed under this chapter as a preneed funeral arrangement sales agent.
- (8) "Unlawful conduct" as defined in Section 58-1-501 includes:
 - (a) engaging in, providing, or agreeing to provide funeral arrangements to be provided under a preneed funeral arrangement without first obtaining a license as a preneed funeral arrangement provider under this chapter;
 - (b) engaging in selling, representing for sale, or in any other way offering to sell any contract under which preneed funeral arrangements are to be provided without first obtaining a license as a preneed funeral arrangement sales agent under this chapter, or as a funeral service director under Title 58, Chapter 9, Funeral Service License Act;
 - (c) selling or representing for sale any preneed funeral arrangement contract or agreement:
 - (i) which has not been approved as to form and content by the division; and
 - (ii) a current copy of which is not on file with the division; and
 - (d) using the title "funeral service director," "funeral service apprentice," or "funeral service establishment" unless licensed under Title 58, Chapter 9, Funeral Service License Act.

58-58-3. Board - Membership - Duties.

- (1) There is created the Preneed Funeral Arrangement Licensing Board consisting of:
 - (a) three funeral directors, each of whom are owners or officers of funeral establishments that are providers under this chapter;
 - (b) one preneed sales agent;
 - (c) one owner or officer of an endowment care cemetery; and
 - (d) two members from the general public.
- (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- (3) The duties and responsibilities of the board are provided in this chapter and shall be in accordance with the provisions of Sections 58-1-202 and 58-1-203.

58-58-4. License classifications - Exemptions.

- (1) The division shall issue licenses under this chapter in the classifications:
 - (a) preneed funeral arrangement provider; or
 - (b) preneed funeral arrangement sales agent.
- (2) A person engaged in the sale of funeral merchandise who delivers the merchandise at the time of purchase or incidental to the time of purchase is not considered to be engaged in the sale of preneed funeral arrangements and is exempt from licensure under this chapter even though the merchandise may not be used for its intended purpose until the death of a person at some future time.

58-58-5. Qualifications for licensure.

- (1) An applicant for licensure as a preneed funeral arrangement provider shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee as determined by the department pursuant to Section 63-38-3.2;
 - (c) be licensed in the state as a funeral service establishment;
 - (d) be free of activities or conduct which, when considered with the responsibilities of a licensee and the public interest, is a threat to the public health, safety, or welfare;
 - (e) file with the application a copy of each form of contract or agreement the applicant will use in the sale of preneed funeral arrangements; and
 - (f) provide evidence of appropriate licensure with the Insurance Department if the applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or in part by an insurance policy or product to be sold by the provider or his sales agent.
- (2) An applicant for licensure as a preneed funeral arrangement sales agent shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee as determined by the department pursuant to Section 63-38-3.2;
 - (c) be free of any activity or conduct which, when considered with the responsibilities of a licensee and the public interest, is a threat to the public health, safety, or welfare;
 - (d) be a high school graduate or have obtained a certificate of equivalency approved by the division;
 - (e) pass an examination approved by the division in collaboration with the board;
 - (f) provide evidence that the applicant will be associated with a licensed preneed funeral arrangement provider upon issuance of a license under terms acceptable to the division; and
 - (g) provide evidence of appropriate licensure with the Insurance Department if the applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or in part by an insurance policy or product.

58-58-6. Term of license - Expiration - Renewal.

- (1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
- (2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

58-58-7. Grounds for denial of license - Disciplinary proceedings.

Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

58-58-8. Preneed contract requirements.

- (1) Every preneed funeral arrangement sold in this state shall be evidenced by a written contract. The provider shall file the form of the contract with the division. Approval of the contract by the division is required before any representation may be made by a provider or sales agent to a potential buyer or any sale.
- (2) Each preneed contract form approved by the division shall:
 - (a) be written in clear and understandable language printed in an easy-to-read type size and style;
 - (b) bear the pre-printed name, address, telephone and license number of the provider obligated to provide the services under the contract terms;
 - (c) be sequentially numbered by contract form;
 - (d) clearly identify that the contract is a guaranteed product contract;
 - (e) provide that a trust is established in accordance with the provisions of Section 58-58-9;
 - (f) provide that the insurance policy or product is filed with the Insurance Department and meets the requirements of Title 31A, Insurance Code if the contract is funded by an insurance policy or product; and
 - (g) conform to other standards created by rule under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for the purpose of protecting the interests of buyers and potential buyers.
- (3) No modification of the form, terms, or conditions of the preneed contract may be made without the prior written approval of the division. The division's approval may not be unreasonably withheld.
- (4) A preneed contract shall provide for payment by the buyer in the form of money, check, money order, credit card, or negotiable instrument which may be liquidated by the provider within 30 calendar days after receipt by the provider or the provider's sales agent.
- (5) A preneed contract may not be revocable by the provider except in the event of nonpayment under terms and conditions clearly set forth in the contract.
- (6) A preneed contract may not be revocable by the purchaser or beneficiary except in the event of a substantial contract breach by the provider or substantial evidence that the provider is or will be unable to provide the personal property or services to the beneficiary as provided under the contract. The contract shall contain a clear statement of the manner in which payments made on the contract shall be refunded to the purchaser or beneficiary upon revocation by the beneficiary.

58-58-9. Payments to be held in trust - Trustee qualifications.

- (1) All money representing payments for the purchase of a preneed funeral

arrangement shall be deposited by the provider or sales agent receiving the payment within ten working days after receipt of cash or cash equivalent or within 35 calendar days after receipt of a negotiable instrument.

- (2) All money received under Subsection (1) shall be placed in a trust account naming as trustee a Utah financial institution authorized to engage in the trust business under Title 7, Chapter 5, Trust Business.

58-58-10. Trust agreement.

- (1) Each trust established by a provider shall be administered in accordance with a trust agreement conforming with the requirements of this chapter, rules adopted with respect to this chapter, the provisions of Title 75, Chapter 7, Trust Administration, and all other state and federal laws applicable to trusts and trust agreements.
- (2) Each trust agreement shall require that the provider report funds deposited into the trust in the name of the beneficiary, the contract number, and that the trustee shall establish a separate account within the trust for each beneficiary and contract number.
- (3) Each trust agreement shall require that the trustee separately account for each contract and separately record payments with respect to each contract made into the corpus of the trust.
- (4) Each trust agreement shall provide for distributions from the trust in accordance with the provisions of this chapter upon the death of the beneficiary, revocation of the contract by the provider upon nonpayment by the purchaser, or upon revocation of the contract by the beneficiary or purchaser.

58-58-11. Interest earned on trust funds.

Interest earned on trust funds shall be available for expenditure according to the following priority:

- (1) to pay the reasonable trustee expenses of administering the trust within a maximum amount established by rule;
- (2) to pay within a maximum amount established by rule the reasonable provider expenses associated with:
 - (a) the sale of the plan;
 - (b) administering the collection, remittance, and accounting of the amount of payments made into the corpus of the trust; and
 - (c) reporting required with respect to those contracts which have been sold and under which the provider is obligated;
- (3) to pay the costs of providing personal property and services at need for which the provider is obligated under a specific outstanding preneed funeral arrangement contract; and
- (4) to pay the provider available funds left in the individual trust account after:
 - (a) all costs of providing personal property and services for which the provider is obligated under the contract underlying the trust; or
 - (b) the contract is canceled as provided under this chapter and all amounts payable to the purchaser, beneficiary, or any other person have been paid in full.

58-58-12. Distribution of funds.

- (1) Interest earned on trust funds shall be available to the provider according to the priority set forth in Section 58-58-11.
- (2) The amount of payments made into the corpus of the trust and any other amount which has been paid into the corpus of the trust shall be paid to the provider in the amount credited to a specific account upon the event of one of the

following:

- (a) the death of the beneficiary which shall be demonstrated to the trustee by the provider by furnishing to the trustee a request for payment from the trust accompanied by a certified copy of the death certificate of the beneficiary; or
 - (b) revocation of the preneed funeral arrangement contract by either the provider or the purchaser in accordance with the terms and conditions of the contract, which shall be demonstrated to the trustee by the provider by furnishing to the trustee satisfactory evidence that the contract has been revoked and that all funds due to the buyer or beneficiary have been paid by the provider.
- (3) The amount of payments made into the corpus of the trust and any other amount which has been paid into the corpus of the trust shall be paid to the purchaser or beneficiary upon an order of any court having jurisdiction in the event of any one of the following:
- (a) a judgment to the benefit of a purchaser or beneficiary upon a finding of evidence that the provider is in substantial breach of the contract, or that there is substantial evidence that the provider is or will be unable to provide the personal property or services to the beneficiary under the contract;
 - (b) a judgment of bankruptcy against the provider; or
 - (c) any finding by the court which determines that such funds should be rightfully returned to the purchaser or beneficiary.

58-58-13. Annual reports concerning trust funds.

- (1) Each contract seller shall file an annual report with the division on or before April 15 of each year in a form provided by the division. The report shall state the name of the trustees with which the provider has trust funds on deposit and the amount remaining on deposit in the trust fund on December 31 of the preceding year or other annual reporting period as the division may establish.
- (2) Any contract seller which has discontinued the sale of contracts but which has outstanding contracts is not required to renew its license. It shall continue to make annual reports to the division until all outstanding contracts have been fully performed or transferred to a licensed contract seller.

58-58-14. Records and reports of trustee - Contents.

The trustee shall keep a record of all agreements. The record shall contain the name and address of the payor, the date and the amount of each payment made, the date and amount of each withdrawal and to whom paid, and the name of the bank or trust company depository.

58-58-15. Audits.

- (1) The division may audit records of the provider and may inspect them at any time the division considers it necessary. The provider or trustee shall make available to the division for examination, inspection, or auditing, all records pertaining to the accounts relating to contracts sold and trusts established under this chapter.
- (2) The director may employ experts from outside the division if special need exists to perform examinations, inspections, and audits under this section. The provider shall be responsible for payment to the division of all reasonable and necessary costs related to the employment of such experts.

58-58-16. Repealed.

PRENEED FUNERAL ARRANGEMENT ACT

**Title 58, Chapter 58
Utah Code Annotated 1953
As Amended by
Session Laws of Utah 1996**

Issued April 29, 1996